

ACT NO. 13 OF 2016

I assent.

J. K. KONROTE
President

[6 June 2016]

AN ACT**TO AMEND THE FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION
PROMULGATION 2007**

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Fiji Independent Commission Against Corruption (Amendment) Act 2016.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

(3) In this Act, the Fiji Independent Commission Against Corruption Promulgation 2007 is referred to as the “Promulgation”.

Section 2 amended

2. Section 2 of the Promulgation is amended by inserting the following new definitions—

““Minister” means the Minister responsible for anti-corruption;

“President” means the President of the Republic of Fiji;”

Section 2A amended

3. Section 2A of the Promulgation is amended by—

- (a) deleting paragraph (*da*);
- (b) in paragraph (*g*), deleting “[Cap. 21]” and substituting “(Cap. 17)”;
- (c) in paragraph (*k*), deleting “,” and substituting “;”; and
- (d) inserting the following new paragraph after paragraph (*k*)—
 - “(l) any offence which the Commissioner may prosecute under any written law.”

Section 5 amended

4. Section 5 of the Promulgation is amended by—

- (a) in subsection (1), deleting “subject to the orders and control of” and substituting “appointed by”; and
- (b) deleting subsection (2).

Section 8 amended

5. The Promulgation is amended by deleting section 8 and substituting the following—

“Appointment of officers

8.—(1) The Commissioner may appoint officers necessary to assist the Commissioner in the performance of his or her functions in accordance with this Promulgation.

- (2) The officers shall be employed—
 - (a) on such terms and conditions as the Commissioner may think fit; and
 - (b) subject to the standing orders made under section 11.”

Section 10 amended

6. Section 10 of the Promulgation is amended by—

- (a) deleting subsection (1) and substituting the following—
 - “(1) An officer authorised in that behalf by the Commissioner may, without warrant, arrest a person if he or she reasonably suspects that such person has committed an offence to which this Promulgation applies, provided that, in respect of the offences under the Crimes Decree 2009 or any law repealed by the Crimes Decree 2009, the power of arrest without warrant is limited to indictable offences.”;
- (b) in subsection (3)(a), deleting “and”;
- (c) in subsection (3)(b), deleting “.” and substituting “; and”;

(d) in subsection (3), inserting the following new paragraph after paragraph (b)—

“(c) may exercise any other powers given to police officers under Part III of the Criminal Procedure Decree 2009.”

Section 10A amended

7. Section 10A(8) of the Promulgation is amended by deleting “President” and substituting “Commissioner”.

Section 10B amended

8. Section 10B of the Promulgation is amended by inserting “and seize such evidence” after “search such premises or place”.

Section 10D amended

9. Section 10D of the Promulgation is amended by inserting the following new subsection after subsection (4)—

“(5) Any person who, in lawful custody for an offence, refuses to submit to the taking of any of the methods of identification authorised to be taken under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of \$2,000 and to imprisonment for 3 months and after conviction, reasonable force may be used to take such methods of identification.”

New sections 10E, 10F and 10G inserted

10. The Promulgation is amended by inserting the following new sections after section 10D—

“Interception warrants

10E.—(1) An officer acting under the instructions of the Commissioner may apply in writing to the High Court for a warrant if he or she has reasonable grounds to suspect or believe that a person has committed, is committing or is about to commit an offence to which this Promulgation applies.

(2) A High Court Judge may, upon receiving a written application under subsection (1), issue a warrant if he or she is satisfied that there are reasonable grounds for such suspicion or belief to authorise the covert monitoring and recording, by any means, of the conduct and communications, including telecommunications, of the person.

(3) A warrant issued under this section may be renewed by further application.

(4) A warrant issued under this section authorises any officer—

(a) to overtly or covertly enter or, in the case of a renewed warrant, re-enter any place specified in the warrant, by force if necessary, for the purpose of executing the warrant; and

(b) in the case of a renewed warrant, to continue monitoring and recording pursuant to the original warrant subject to any variation specified in accordance with subsection (8)(g).

(5) If the circumstances are such that a written application under subsection (1) is not reasonably practicable, an oral application may be made.

(6) An application, whether in writing or made orally, must include the following—

- (a) the facts relied upon to show reasonable grounds for suspicion or belief;
- (b) the manner by which it is proposed to undertake the monitoring;
- (c) the name or names of the person or persons to be monitored, if known;
- (d) the place at which the monitoring and surveillance is intended to take place;
- (e) the identity of any person who may be required by the court to provide assistance for the purpose of giving effect to the warrant;
- (f) the requested duration of the warrant; and
- (g) where the application is made orally, the circumstances said to render a written application not reasonably practicable.

(7) In determining whether a warrant is to be granted under this section, the High Court Judge shall have regard to the following—

- (a) the nature and gravity of the offence in respect of which the warrant is sought;
- (b) the extent to which the privacy of any person is likely to be affected;
- (c) an alternative means of obtaining the information or evidence sought and the extent to which employing such means may prejudice the investigation, through delay or any other reason;
- (d) the extent to which information that may be obtained is likely to assist the investigation of the offence;
- (e) the evidentiary value of any information sought to be obtained;
- (f) any previous warrant sought or issued in connection with the same offence; and
- (g) in the case of an oral application, the circumstances that render a written application not reasonably practicable.

(8) A warrant issued under this section must—

- (a) specify the manner by which monitoring is authorised;
- (b) if known, specify the name of any person or persons who may be monitored;
- (c) specify the place or places at which monitoring and surveillance are authorised;
- (d) specify any condition subject to which place or places may be entered pursuant to the warrant;